"Tied" leases and shoe-production-service have developed naturally together. Shoe machinery seems always to have been more conveniently leased than bought outright. As shoe machinery became more expensive, varied, and complex, it became more convenient to lease than to buy, and more essential that the machines composing the successive links in the chain of shoe manufacture should be in perfect mechanical correlation. An arrangement of leases was accordingly developed that encouraged the shoe manufacturer to use a series of perfectly correlated machines for the series of mechanical operations in the "bottoming" of shoes, and encouraged the machinery manufacturer to keep this series of machines in perfect operation in the shoe manufacturer's factory. This arrangement of leases, on which shoe-production-service entirely depended, in turn depended entirely on "tied" leases.

VIII

"Tied" leases and shoe-production-service have their counterparts in many familiar industries.

The railroad company "ties" its locomotives, its cars, its roadbed, and its station facilities, and offers them to its passengers for use in combination only. The telephone company "ties" its instruments, its switch-boards, its trunk lines, and its exchanges, and offers them as one indivisible service only. The taxicab company "ties" the taxicab and the chauffeur, and offers them for hire as one entirety only.

So familiar are all these "tieing" arrangements that no one ever thinks of "untieing" them. The railroad company might, of course, offer its patrons the separate use of its roadbed without its equipment, or its equipment without its roadbed, or its station facilities without either roadbed or equipment. The telephone company might lease its instruments, its switchboards, its trunk lines, and its exchanges separately, and leave to others the co-ordination of all these appliances into a complete telephone service. The taxicab company might let taxicabs without chauffeurs, and

chauffeurs without taxicabs. Such arrangements would, of course, be physically possible, and a fair charge for each separate item might possibly be determined. But everyone knows that under such arrangements all possibility of service would disappear.

Service is not leasing locomotives and cars and roadbeds and station facilities, nor renting telephone instruments and switchboards and trunk lines and exchanges, nor hiring out taxicabs and chauffeurs. Service is all these and much more besides. Railroad service is the use of the locomotive, the car, the roadbed, and the station facilities, and also the assumption of complete responsibility by the railroad company for a safe and reasonably comfortable journey. Telephone service is the use of the instrument, the switchboard, the trunk line, and the exchange and also the assumption of complete responsibility by the telephone company for prompt and efficient transmission of speech. Taxicab service is the use of the taxicab and the chauffeur, and also the assumption of complete responsibility by the taxicab company for a satisfactory trip. The use of all of the appliances of the railroad company, or of the telephone company, or of the taxicab company, is obviously more valuable, when they are used together, than their separate, uncorrelated use can ever possibly be. Until all the appliances for service have been integrated, either by the patron or by someone for him, the first essential of satisfactory service will be lacking.

Satisfactory service must begin with concentration. Whoever would assume the responsibility for satisfactory service must first assemble all the appliances, and then adjust them to each other in perfect correlation, before he can have the absolutely essential conditions of satisfactory service. Nothing short of complete integration, under single concentrated control, will suffice. Neither the use of all the company's appliances, nor their integration at the trouble and expense of the patron, will produce real service. The assumption by the company of complete responsibility for satisfactory operation is a larger element of service than the use of the company's appliances separately, or the use of all of the company's appliances, or even the use of all of the company's appliances together. Not until responsibility for satisfactory operation has been completely shifted from the patron to the company can service

be said to begin. Not until all the appliances of service have been integrated and concentrated under the company's control can the company ever assume this responsibility. As the first condition of service, therefore, perfect integration and concentrated control must be accomplished by one sort or another of "tieing" arrangement.

These truths would scarcely deserve mention were they not so obvious as frequently to escape notice. "Tied" leases of shoe machinery have been attacked in principle, and the entire economic case against the United Shoe Machinery Company has been rested upon them. Nevertheless, in principle at least, "tied" leases appear to be an absolute economic necessity without which shoe-production-service would be impossible. Were the economic case against the United Shoe Machinery Company, therefore, to be determined upon the issue of whether or not "tied" leases are sound in principle, the economic experience of every industry furnishing service to the community would seem to be decisive of the case.

IX

At the point where government regulation begins, the analogy of shoe-production-service to the service furnished by public utility corporations necessarily breaks down.

Railroad and telephone companies and taxicab owners subsist upon franchises and licenses which confer special privileges, and they are, for that reason, properly subject to government regulation. But shoe machinery, like the steam engine—to use the Supreme Court's illustration in its discussion of shoe machinery[1]—is wholly the product of individual and unaided private enterprise. Shoe-machinery manufacturers, therefore, should never, legally or governmentally, be considered subject to governmental regulation like public utilities, any more than the manufacturers of steam engines or other complicated mechanical products.

With this important qualification, however, shoe-production-service is a true economic and industrial utility. Economically and industrially, all utilities that furnish service to their customers, whether public or private, have many features in common.

[1] *United States* v. *Winslow*, 227 U.S. 202, 217, 218.

Efficient shoe-production-service, no less than efficient railroad, telephone, and taxicab service, depends, as has already been shown, upon concentrated control and responsibility. Nor does the resemblance end here. Shoe-production-service, like railroad, telephone, and taxicab service, has been found to be most practicable when furnished to everybody upon substantially equal terms. Shoe-production-service, therefore, more conspicuously than any other form of private utility, has demonstrated that equality of treatment, instead of being a rule of legal and governmental creation, is the economic and industrial law of every true utility, whether public or private.

Equality of treatment, Mr. Brandeis declares, has always been the policy of the United Shoe Machinery Company:

> They started out with certain perfectly admirable principles which, I understand, have been adhered to. In the first place, everybody, big and little, was to be treated alike; there was to be no discount for quantity; so that the small manufacturer had the same chance as the large manufacturer, both in respect to service and royalty. The company adopted a system of leasing, which gave an opportunity to the small manufacturer with little capital to go into the business; and the company gave him as good service as the larger manufacturer.[1]

Before the United Shoe Machinery Company was organized, this was not the rule. Even the company's critics have conceded the improvement which the company in this respect has brought about:

> We were obliged to dicker and trade with every different manufacturer of machinery all the time, with the moral certainty that somebody who had more time and attention to give to it would get a better bargain than we were able to obtain. . . . . Today this is all changed. . . . . We are confident that we are getting the machine on as favorable terms as any competitor and we are enabled to employ our own time and ability to the legitimate branches of our business, and we have not, up to this time, been obliged to pay as much for this privilege as we formerly paid for the very much less satisfactory conditions.[2]

Shoe manufacturers in general have seemed enthusiastic over the equality with which the United Shoe Machinery Company treats all its customers:

[1] Senate Interstate Commerce Committee Hearings, December 14, 15, and 16, 1911, Part XVI, p. 1160.

[2] Charles H. Jones, quoted in House Judiciary Committee Hearings, January 26, 27, and February 19, 1912, p. 110.

"The United Company have treated everybody exactly alike," said a New York manufacturer.[1] "The company uses us all alike," declared a Massachusetts manufacturer.[2] "One thing, especially, which appeals to us, is that all are treated alike," said another Massachusetts manufacturer.[3] "The benefits we receive from the United Shoe Machinery Company," declared a New York manufacturer, "have enabled us to compete successfully with the larger manufacturers of shoes."[4] "We have no fault whatever to find with them as we concede that we are on par with everyone else," said another New York manufacturer.[5] "We positively know that we get the same fair treatment that all our competitors get," declared a Wisconsin manufacturer.[6] "The man with small means but with ability," said a California manufacturer, "has really the same opportunity as the man with millions. He obtains his machinery on the same basis as his neighbor."[7] "The present policy of the company," declared a Pennsylvania manufacturer, "is a decided benefit to the smaller manufacturers, inasmuch as it places them on an equality with their larger competitors, so far as the company's line of machinery is concerned, and enables men of small means to engage in the manufacture of shoes."[8]

[1] Letter of Heywood Boot and Shoe Co., Worcester, Mass., *Boston News Bureau*, November 24, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30.

[2] Letter of Trevett & Berry, Lynn, Mass., *Boston News Bureau*, November 18, 1911; House Judiciary Committee Hearings, Feb. 20, 21, 22, March 1, 1912, pp. 21–30.

[3] Letter in *Boston New Bureau*, November 20, 1911; House Judiciary Committee Hearings, February 20, 21, 22, March 1, 1912, pp. 21–30.

[4] Letter of A. G. Spalding & Bros., New York, *Boston News Bureau*, December 6, 1911; House Judiciary Committee Hearings, February 20, 21, 22, March 1, 1912, pp. 21–30.

[5] Letter of Meldola & Coon, Rochester, N.Y., *Boston News Bureau*, December 1, 1911; House Judiciary Committee Hearings, February 20, 21, 22, March 1, 1912, pp. 21–30.

[6] Letter of Columbia Shoe Manufacturing Co., Sheboygan, Wis., *Boston News Bureau*, November 11, 1911; House Judiciary Committee Hearings, February 20, 21, 22, March 1, 1912, pp. 21–30.

[7] Letter of Brennan Tannery and Shoe Manufacturing Co., Upland, Cal., *Boston News Bureau*, December 2, 1911; House Judiciary Committee Hearings, February 20, 21, 22, March 1, 1912, pp. 21–30.

[8] Letter of T. H. Eisenhuth, Williamsport, Pa., *Boston News Bureau*, November 13, 1911; House Judiciary Committee Hearings, February 20, 21, 22, March 1, 1912, pp. 21–30.

This equality of service and royalty charge, to rich and poor alike, which has always characterized the United Shoe Machinery Company system, has repeatedly been named as the cause of the absolutely open competition that exists in the shoe manufacturing business throughout the United States.[1]

"This industry," says the Massachusetts Commission on the Cost of Living, "is one of the few great lines of industrial enterprises in the United States in which the trust form of control has not made headway."[2]

X

"Started under conditions the most favorable to serve the public of probably any in the field of industry," as Mr. Brandeis says in referring to the United Shoe Machinery Company, "managed by the men who had made the greatest success of any in the shoe-machinery business . . . . by the men who were the ablest, the hardest workers, and in a certain sense, the farthest seeing of all those engaged in the business"[3] (among whom, it should be added, was Mr. Brandeis himself),[4] the United Shoe Machinery Company is, nevertheless, today, Mr. Brandeis' familiar illustration of the "inefficiency incident to monopoly."[5] Mr. Brandeis says:

> There has been a cessation in the shoe machinery business—a cessation of advance. Europe has gone ahead. You will find exactly the same thing in shoe machinery. Germany has gone ahead in invention. Why? Because of the various competing demands on invention. There is no room for any American inventor in these things. Not merely do they control patents but they discourage invention, because there is no market for the inventor, because there is not any chance for the capitalist to go ahead and do things. He has

[1] See House Judiciary Committee Hearings, January 26, 27, and February 19, 1912, pp. 112, 115; February 20, 21, 22, and March 1, 1912, pp. 15, 16, 48; Senate Interstate Commerce Committee Hearings, January 13, 15, and 16, 1912, Part XXI, p. 1859.

[2] *Report of Massachusetts Commission on the Cost of Living*, 1910, p. 156.

[3] Senate Interstate Commerce Committee Hearings, December 14, 15, and 16, 1911, Part XVI, p. 1160.

[4] Senate Interstate Commerce Committee Hearings, January 17, 18, 19, 1912, Part XXII, p. 1957.

[5] Senate Interstate Commerce Committee Hearings, December 14, 15, and 16, 1911, Part XVI, p. 1160.

so discouraging an outlook, with this huge, powerful organization, with all the money in the business against him, that the capitalist will put his money somewhere else, and the inventor will either put his brain somewhere else, or what is most common of all, he will not utilize it at all for the purposes for which it otherwise would be utilized.[1]

The Department of Commerce and Labor of the United States has recently investigated the shoe and leather trade in Europe, and has found that neither Germany nor any other country of Europe has "gone ahead in invention" of shoe machinery.

Prior to 1889, when the American Goodyear machines were first introduced into Germany, the boot and shoe industry was of comparatively small importance. At that time, other shoemaking machines of American origin were used, such as the American heeling and finishing machines and the McKay sole-sewing machine, but they were not very numerous.[2]

From 1909 to 1910, however, the quantity of machinery for the shoe and leather industries imported into Germany from the United States increased from 626,340 pounds to 691,240 pounds; while the quantity imported into Germany from the United Kingdom declined during the same years from 150,700 pounds to 144,100 pounds.[3] The report continues:

It is difficult to state even approximately the proportion of shoemaking machinery supplied to German manufacturers by the German United Shoe Machinery Company (affiliated with the United Shoe Machinery Company, of Boston, Mass.), and competing shoe-machinery concerns. It is safe to state, however, that by far the larger part of equipment is furnished by the German United Shoe Machinery Company. The well-known Maschinenfabrik "Moenus" A. G., Frankfort-on-the-Main, originated from the firm of Webber & Miller founded in 1862. . . . . Being a purely German concern, it does a large business, especially in the government's military workshops. It copies practically everything it can of American invention in shoemaking machinery, and also manufactures copies of American tanning machinery. . . . . The Atlas Werke, Leipzig, originally copied the Eppler welt machines, but various difficulties in connection with the construction of the machines were experienced; and I understand the Eppler system has since been dropped, and

[1] House Patent Committee Hearings, Part 18, May 15, 1912, p. 10.

[2] "Shoe and Leather Trade in Germany," Special Agents Series No. 50, Department of Commerce and Labor, 1912, p. 7.

[3] *Ibid.*, p. 8.

that copies of the old Goodyear welter and stitcher are now being manufactured. . . . . Keats Maschinen Gesellschaft, Frankfort-on-the-Main, is probably one of the oldest shoe-machinery firms, but, I am told, it is rapidly losing its hold on the business in this country. Adrian & Busch, Oberursel, manufacture a welter and stitcher which finds some sale. They also manufacture copies of a number of American accessory machines for shoemaking. . . . . The cost of the machinery manufactured by the firms mentioned is less than that of the same furnished by the German United Shoe Machinery Company, but the relative efficiency is also correspondingly less.[1]

The Department of Commerce and Labor reported upon the United Kingdom:

None of the competing firms produces the complete factory plant put out by the British United Shoe Machinery Company, and it is probable that the share of installed machinery now held by these competing firms is approximately 20 per cent, leaving practically 80 per cent of the equipment to be furnished by the British United Shoe Machinery Company.[2]

Similar conditions were found in France:

The shoemaking machinery installed in French factories is largely supplied by the United Shoe Machinery Company of France, which is affiliated with the United Shoe Machinery Company of Boston. In competition with this equipment are machines of French, English, and German origin, which, combined, constitute about 25 per cent of the total equipment.[3]

XI

Substantially the same conditions were found in all the other countries of Europe.

In Denmark:

Of the 38 factories in the country 12 are equipped entirely with American machinery. . . . . In every instance where it was possible to obtain information on the subject it was stated that American shoemaking machines give better satisfaction in all respects than like machines of any other country. In factories in which American machines have replaced competing equipment, lower working cost has invariably resulted without reduction in wages.[4]

[1] "Shoe and Leather Trade in Germany," Special Agents Series No. 50, Department of Commerce and Labor, 1912, pp. 8–9.

[2] "Shoe and Leather Trade in the United Kingdom," Special Agents Series No. 49, Department of Commerce and Labor, 1912, p. 8.

[3] "Shoe and Leather Trade in France and Switzerland," Special Agents Series No. 57, Department of Commerce and Labor, 1912, p. 8.

[4] "Shoe and Leather Trade in Scandinavia," Special Agents Series No. 63, Department of Commerce and Labor, 1912, pp. 7–8.

In Norway:

There are 13 shoe factories in Norway equipped throughout with American machinery and 17 using machines of other origin.[1]

In Sweden:

The factory buildings, in general, are well constructed . . . . with the machinery installed after the American system. . . . . Sweden has at present 56 boot and shoe factories, 32 of which are equipped throughout with American machinery.[2]

In Italy:

The industry developed gradually until about a year ago, when the lease system for shoe machinery was introduced by the United Shoe Machinery Company of Italy (affiliated with the United Shoe Machinery Company). The lease system resulted in this country, as elsewhere, in the installation of machinery by many small manufacturers who were not in a position to do so previously because of lack of funds, while those possessing a few machines were enabled to complete the equipment of their plants. . . . .

American shoemaking machinery was not introduced into Italy to a considerable extent until 1906. It may be safely stated that at present 90 per cent of the entire equipment of Italian shoe factories is furnished by the United Shoe Machinery Company of Italy. Competition is principally met in machines of German manufacture, both the Moenus and Keats houses maintaining branches in Milan. One or two Italian shoe factories are equipped with French machines, and one with English machinery. Since the introduction of the lease system by the American Company, competing concerns have constantly lost ground, as the trade of the largest manufacturers, who have now adopted the American leased machines, was formerly in the hands of competitors. The change of equipment has proved very profitable, as it is conceded by Italian manufacturers that a shoe can be made better and more cheaply on American machines than on any other. The proportion of equipment furnished by competing companies is approximately as follows: English, 1 per cent; French, 3 per cent; German, 6 per cent; American, 90 per cent.

Competing machines are generally imitations of American equipment. The cost of machines similar to those sold by the American company is lower, but efficiency corresponds to the price; for lines corresponding to leased American machines, the prices asked are accordingly higher. No competing European company has yet put out as full and complete a line of shoemaking machinery as the United Shoe Machinery Company.[3]

[1] *Ibid.*, p. 11. [2] *Ibid.*, p. 15.

[3] "Shoe and Leather Trade in Italy and Austria-Hungary," Special Agents Series No. 70, Department of Commerce, 1913, pp. 5, 6.

In Austria-Hungary:

American machines make up by far the larger part of the factory equipment in this country.[1]

In Russia:

The quantity of boots and shoes manufactured in Russia by machinery is increasing rapidly, and the larger part is made on American machines. The use of machinery of American origin began in 1899 and of the equipment now installed in the 49 factories about 60 per cent is American, 30 per cent German, and 10 per cent French.[2]

In Belgium:

The larger proportion of the shoemaking machinery used in Belgium is furnished by the United Shoe Machinery Company. . . . . Of the 120 factories manufacturing by machinery, 55 may be called complete plants. Of these, 33 use only machines of the United Shoe Machinery Company, 12 use both American and European machines, and 10 use only European machines. Of the 65 manufacturers who have an incomplete equipment, 8 use no other machines than those of the United Shoe Machinery Company, 19 use both American and European machines, and 38 use only European machines.[3]

In Spain:

Ninety per cent of the machinery now in actual use is American.[4]

European shoe manufacturers, the United Shoe Machinery Company declares, get the United Shoe Machinery Company's machines upon no better terms than do American manufacturers:

There is no truth in the statement that European shoe manufacturers get the machines of the United Shoe Machinery Company on better terms than American manufacturers can get them. The average royalty per pair of shoes of the same quality has never been lower in Europe than in the United States. There is no appreciable difference between the leases which European and American manufacturers sign; yet the United Shoe Machinery Company, pursuing abroad the same business methods as at home, has done a greatly increasing business in open competition with the so-called free machinery which its critics here profess to favor. European manufacturers are constantly replacing

[1] "Shoe and Leather Trade in Italy and Austria-Hungary," Special Agents Series No. 70, Department of Commerce, 1913, p. 33.

[2] "Shoe and Leather Trade in Russia," Special Agents Series No. 68, Department of Commerce and Labor, 1913, p. 3.

[3] "Shoe and Leather Trade in Belgium, Spain, and Egypt," Special Agents Series No. 73, Department of Commerce and Labor, 1913, pp. 5–6.

[4] *Ibid.*, p. 14.

their free machinery with machinery obtained from the United Shoe Machinery Company under lease conditions, because, like American manufacturers, they know they can thus get better machines, better service, and better terms than in any other way.[1]

XII

While still a director of the United Shoe Machinery Company Mr. Brandeis described its encouragement of invention:

It is absolutely essential that there should be constant development, and that we should be able to introduce new machines or to apply to those outstanding the improvements which are made. And those improvements are very numerous. For instance, the number of patents which have been used by this company, or which are now pending and which we expect to obtain, in these nine years is over 1,000. Now it is said that the inventor has no chance. It is absolutely untrue. Although we have now 35 men who are working all the time on nothing else except attempting to improve our machines, and the concern has spent $150,000 a year in attempts to improve its machines—I mean not in manufacturing, but this is an experimental expense, a patent expense, and inventor's expense—although that is true, we have bought more patents from other inventors in these years than we have developed in our own establishment with all that expense. We have probably spent during this period $1,000,000 in improvements and inventions on this machinery, and yet we have bought from others more patents than we have developed ourselves.[2]

What the United Shoe Machinery Company has since done to improve shoe machinery has been described by its president:

During the year [ending March 1, 1911] the company brought in from shoe factories over 4,000 of its machines which were broken up and thrown on the scrap heap in order that they might be replaced with machines embodying the latest improvements—an expense which the company assumes under its present system of doing business but which would otherwise have to be borne by the shoe manufacturers.[3]

During the fiscal year of 1912–13, the company placed on the market thirty new types of machines as follows: three in the pulling-over department; one in the lasting department; seven in the Goodyear department; two in the heeling department; twelve in the general department; two in the eyelet department; three in the fitting-room department. These types are either

[1] House Judiciary Committee Hearings, February 20, 21, 22, March 1, 1912, p. 28.

[2] House Judiciary Committee Hearings, January 26, 27, February 19, 1912, pp. 122–23.

[3] House Judiciary Committee Hearings, January 26, 27, and February 19, 1912, p. 192.

improvements of machines previously in use or, as in several instances, are entirely new machines.[1]

Specific illustrations of the company's enterprise have been cited by the company's representatives:

The most conspicuous illustration of this phase of their activities is this Rex pulling-over machine, which cost, taking into account the money expended upon it by the original owner, and money expended by this company, $1,000,000 before it could be placed upon the market, and it is now leasing it at three-eighths of a cent a pair. . . . . There were four machines in connection with that: first, the Rex pulling-over machine; second, the Rex toe-shellacking machine; third, the Rex assembling machine; and fourth, the Rex upper-finish machine. . . . . Nobody knew whether it would ever work and produce results until the last dollar was expended, and the whole $1,000,000 was at the hazard of a successful result. . . . . The expenditures by this company to develop other necessary machines, that have cost from $150,000 to $175,000 and to $200,000, have been solely for the purpose . . . . of producing increased efficiency, and adding ultimately to the return that the company would receive for the 300 machines that it is either selling or leasing to manufacturers, at the same time necessarily producing an efficient result to the factories and to the wage-earners in the industry, and also at the same time producing results to the consumer.[2]

What these improvements signify in shoe manufacture has been explained by practical shoe manufacturers:

We have had a machine put in quite recently that they have been working on about 11 years. This is a pulling-over machine. We pay three-eighths of a cent a pair royalty on it, and it saves us 2 cents a pair in lasting our shoes. Now, I can have any of these machines I want. I can have the lasting machine and not have the welter, or I can have the welter and not have the lasting machine if I want it, or I can have the nailer and not have the welter if I want it. I can have every one or all or none of them just as I prefer.[3]

We put in about three months ago what is called a "puller-over machine." It is a very complicated machine for doing what seems to be a very simple operation. The pulling-over means the placing of the upper, which is the leather part of the shoe, over the last and having this machine pull this upper over the last in the proper place and position on the last as it should be when the shoe is completed, and driving a few tacks in just to hold it preparatory to

[1] *Report of the President to the Annual Meeting*, 1913, p. 7.

[2] House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 158–59.

[3] House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, p. 79.

lasting it; and the lasting consists of putting through another machine where it is tacked down all around securely preparatory to sewing on the sole or welting, if it is the case of a welt shoe. This puller-over machine is a machine that has been evolved and has been for several years being made to the point where it would do the work. That work was formerly done by hand.

The machine had not been out very long until they made an improvement on it, as they have done with lots of their machines. Their policy always has been—and there has been no question about it, they have never deviated from it, it has been upon their own initiative, and has not been from any solicitation on our part—that we could have a new machine whenever we desired it. We would simply make application for it, and they would furnish us with a new machine. They send the new machine to us, and we send back the old machine. We pay the freight on both the machines, and that is all the cost there is to us for the improved machine. Then when the machine arrives and we get ready to have it set up . . . . we wire into Chicago for a man, and he comes the next morning . . . . and sets the machine up and gets it in running order, teaches an operator to run it, and stays there until he has taught him.[1]

To the charge that it has retarded invention, the company has replied:

The United Shoe Machinery Company has spent all the way from $250,000 to $750,000 in experiment and development of new machines every year since it was formed. It has made workable over 100 different new machines, some of which perform operations formerly performed by hand and all of which are far better than those formerly in use. Taken in connection with reduction in royalties, shoe manufacturers by their use effect a saving of nearly 9 cents in the cost of making a pair of Goodyear welt shoes, or nearly double the royalty now paid. A greater number of practical patents in shoe machinery have been made effective in the past 12 years than in any other period of equal length since shoe-making began. One machine alone cost the company years of time and over $1,000,000 in money before it would work. It would not be in the shoe factories of Massachusetts today if it had been left to an individual inventor to make it go.[2]

XIII

On February 25, 1911, under the provisions of the Canadian Combines Investigation Act, an investigation board was appointed to report upon the United Shoe Machinery Company of Canada. To test the validity of the act, an appeal was taken from the order

[1] Senate Interstate Commerce Committee Hearings, January 13, 15, 16, 1912, pp. 1854–55.

[2] House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, p. 27.

of appointment, but eventually the appeal was dismissed by the Court of King's Bench, Appeal side.[1]

Meanwhile, in September, 1911, the Department of Justice of the United States procured two indictments in the District of Massachusetts against the officers of the United Shoe Machinery Company for violation of the Sherman anti-trust act.[2] Demurrers to these indictments were filed in behalf of the defendants. In December, 1911, while these criminal proceedings were pending, the department filed a bill of complaint in the same district against the United Shoe Machinery Company, praying for the dissolution of the company as a combination in restraint of trade and a monopoly in violation of the Sherman anti-trust act.[3]

On March 2, 1912, the District Court quashed the indictments, except for a single count in one indictment. Judge Putnam, giving the opinion of the Court, said:

> The history of the law [i.e., the Sherman anti-trust act] . . . . is in a continuous state of development, and will undoubtedly so remain for an indefinite period. This makes it practically so indefinite, both under the statute in question and aside from it, that criminal prosecutions like this at bar impose great hardship, by terrorizing very considerable portions of the community who have acted honestly, through the possible peril of enormous fines, and terms of imprisonment even for very many years. Under the circumstances, we are unable to understand why the Department of Justice directs, and the President permits, criminal proceedings like this until, in the particular case, the practical application of the statute has been settled by civil proceedings, in view especially of the fact that the flexible methods of bills in equity are capable of exploiting all doubtful questions much more thoroughly, and with more just results, than criminal proceedings. . . . .
>
> This combination, then formed [i.e., the organization of the United Shoe Machinery Company on February 7, 1899], was purely an economic arrangement, not in violation of any rule in restraint of trade at common law, or which has been announced by the Supreme Court, as is shown by an examination of all the cases decided by that tribunal.
>
> It seems to be impossible to deny that the combination of various elements of machinery, all relating to the same art and the same school of manufactures,

[1] *Canada Gazette*, October 26, 1912, p. 1319.

[2] *United States* v. *Winslow, et al.*, U.S. D.C. District of Massachusetts, February, 1911 term.

[3] *United States* v. *United Shoe Machinery Company, et al.*, U.S. C.C. District of Massachusetts.

for the purpose of constructing economically and systematically, and of furnishing any customer the whole, or any part, of an entire system, is in strict and normal compliance with modern progress to limit the manufacture and supply to certain details, as, for example, steam gauges, wheels for railroad cars, or axles for steam locomotives, without furnishing anything else, although, by so doing, the manufacturer of details becomes able to command the entire market. It is absolutely normal, and in accordance with the rightful demand of the market, for any dealer to supply mere details or an entire system of machinery, according as his customers may desire. . . . .

The leases referred to here are the same as those approved in the appeal of *United Shoe Machinery Company* v. *Brunet*, (1909) App. Cas. 330, where the Privy Council decided that the whole combination exhibited here, including leases, was valid. Notwithstanding the decisions of the Privy Council are not authoritative, even in England, like those of the King's Bench, yet the members of the Judicial Committee who sat on this appeal were Lords MacNaughton, Atkinson, Collins, and Gorell, making an exceedingly strong court, hardly to be surpassed in England. Therefore we would be free to follow it if the background was the same here as there. But it is not. . . . . We can easily see that the result of the trial of the issues of fact might remove the apparent illegality arising from these leases; but the case is not so clear that we can sustain the demurrer with reference to the first count of indictment 114. Therefore on the demurrer we hold the second count of indictment 114 invalid, and the first count thereof valid, unless on a trial it appears that the leases we refer to are found to add no obnoxious feature.[1]

On October 18, 1912, two of the members of the Canadian Investigation Board reported that "the United Shoe Machinery Company of Canada is a combine and . . . . competition in the manufacture, production, purchase, sale, and supply of shoe machinery in Canada has been and is unduly restricted and prevented."[2] The third member of the commission dissented from his colleagues on the ground that competition had not been eliminated and that "no attempt has been made to increase the royalties or otherwise act oppressively, but on the contrary every effort has been made to constantly improve the machinery, to assist new manufacturers in starting business, and to satisfy its customers generally."[3]

On February 3, 1913, the Supreme Court of the United States

[1] *United States* v. *Winslow, et al.*, 195 Fed. 578, 584, 592, 594.

[2] *Canada Gazette*, October 26, 1912, p. 1323.

[3] *Ibid.*, pp. 1323, 1324.

unanimously affirmed the decision of the District Court upon the demurrers to the indictments above mentioned.[1] The opinion of the Supreme Court accompanying this decision has already been quoted.

In February, 1913, the Department of Justice of the United States filed a bill of complaint in the District of New Jersey to abrogate a contract made by the United Shoe Machinery Company and the Keighley Company on the ground that the contract was in violation of the Sherman anti-trust act.[2] This was a contract settling certain patent infringement suits and authorizing the United Shoe Machinery Company to manufacture and lease the Keighley inseam trimmer upon a commission basis.

XIV

The United Shoe Machinery Company's business has already shown the effect of these legal proceedings.

The president of the company has declared:

> The total number of machines turned out at the factory has not increased in the proportion of former years, because the company has suspended the system by which it formerly gave every shoe manufacturer the option of either buying outright machines in its general department or leasing them at a nominal rental, the condition of lease being that the machine be used only on shoes which had been operated on by certain other of the company's machines. This method of leasing, as was stated in the annual report last year, has been discontinued on account of the contention in the government suits against the company that it was in violation of the Sherman law. Shoe manufacturers, therefore, no longer have the option of leasing the general-department machines but have to buy them outright, or go without them altogether; and consequently many shoe manufacturers of limited capital have gone without them rather than make the investment required for their purchase, while others who have been planning to go into the shoe manufacturing business have abandoned the idea rather than tie up their money in machinery. . . . . Under present conditions we can no longer equip small factories with new and up-to-date machines of the general department from which no adequate direct pecuniary return is to be expected, but, thanks to a machinery equipment in most factories which up to the present time has enabled them to keep abreast

[1] *United States* v. *Winslow*, 227 U.S. 202.

[2] *United States* v. *United Shoe Machinery Company, et al.*, U.S. D.C. District of New Jersey.

of the demands of trade, the output of shoes has steadily increased and the revenue of the company has increased accordingly. That more shoe manufacturers have not been put to great expense or serious inconvenience as yet as a result of this change is due to the fact that for many years the company, with a view to increasing the effectiveness of its principal leased machines, has supplied from its general department a constantly increasing number of miscellaneous machines for the use of which the manufacturers have not been required to make any material investment; and their factories are at present so thoroughly equipped that they have not yet found it necessary to replace worn-out machines or add substantially to their equipment in machinery of this character.[1]

Before these legal proceedings were begun against the United Shoe Machinery Company, the company had begun to put in operation a plan of distributing among its lessees of Goodyear welt-sewing, outsole-stitching, and turn-sewing machines common stock of the corporation purchased in the open market from a fund created by setting aside a percentage of the amounts received from such lessees during the period of three years beginning January 1, 1910. The number of lessees among whom this stock was distributed was about 1,100, and 32,975 shares of stock were purchased for distribution at an average price per share of $52.53. On December 31, 1912, however, the company announced the discontinuance of the plan:

This decision is due to the proceedings, both civil and criminal, instituted by the Department of Justice, and by the attempts of other persons to secure legislation, declaring illegal those methods of doing its business by which the company has been able to furnish its lessees with the best machines, as well as many new machines, at a constantly diminishing expense to the lessees, and at the same time with such security to the company that its leased machines shall be used only under proper conditions and in connection with machines which will efficiently and continuously co-operate with them to the advantage of both the company and its lessees, and to an extent which will insure to the company a proper return on its investment. It must be plain that, until the company can be definitely assured that its settled system of doing business, which it believes has been not only to the mutual benefit of the company and its lessees, but of equal advantage to the consuming public and to shoe operatives, is not to be disrupted and prevented, the company is unable further to develop its established policy and to extend the benefits thereof to its lessees.[2]

[1] *Report of the President to the Annual Meeting*, 1913, pp. 6–7.

[2] *Ibid.*, pp. 9–10.

The company has already begun to modify its Canadian leases in obedience to the findings of the Canadian Investigation Board.[1]

XV

Many shoe manufacturers have expressed their apprehension of the outcome of these legal proceedings against the United Shoe Machinery Company. A Massachusetts manufacturer has declared: "We cannot see where this disintegration of the company will benefit us any."[2] A Pennsylvania manufacturer has stated: "I very much question whether the standard of service would be maintained if the United Shoe Machinery Company were to be dissolved."[3] A Massachusetts manufacturer has declared: "We fully believe that if the dissolution of the United Shoe Machinery Company be completed, or if the principle of leasing machines be abandoned, shoe manufacturers of the United States would be greatly handicapped, as compared with the present system they are now operating under."[4] Another Massachusetts manufacturer has stated: "We believe that the disintegration of the United Shoe Machinery Company, if attempted, would be hazardous to the shoe manufacturers, and the results so uncertain that such measures ought to be discouraged."[5]

The effect upon the retail price of shoes has been discussed by several manufacturers. A Wisconsin manufacturer has stated: "If the company were disintegrated the price of shoes at retail would without question cost more."[6] An Ohio manufacturer has

[1] *Report of the President to the Annual Meeting*, 1913, p. 13.

[2] Letter of Eagle Shoe Manufacturing Co., Lynn, Mass., *Boston News Bureau* December 1, 1911; House Judiciary Committee Hearings, February 10, 21, 22, and March 1, 1912, pp. 21–30.

[3] Letter of T. H. Eisenhuth Co., Williamsport, Pa., *Boston News Bureau*, November 13, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30.

[4] Letter of Pratt Shoe Co., Natick, Mass., *Boston News Bureau*, November 18, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30.

[5] Letter of Arthur A. Williams Shoe Co., Holliston, Mass., *Boston News Bureau*, December 1, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30.

[6] Letter of Columbia Shoe Co., Sheboygan, Wis., *Boston News Bureau*, November 11, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30.

declared: "We believe that disintegration of the company would be followed by increased cost of machinery to the manufacturer, and, of necessity, prices of shoes at retail would have to be raised."[1]

Small shoe manufacturers have apparently been the most apprehensive: A Massachusetts manufacturer has declared: "We believe that the disintegration of this company would be a very serious blow to the smaller manufacturer like us, doing a business of $100,000 to $150,000 a year."[2] A Pennsylvania manufacturer has stated: "Should the courts find the United Shoe Machinery Company has been doing business contrary to law, and disintegrate the company, it would not, in the writer's opinion, be a matter of more than ten years before the shoe manufacturing business would be in the hands of a few (say, ten or a dozen concerns), as these concerns, some with a capital of $20,000,000, or more, could and would buy all or any machines that would advance their interests. The small or middle-sized shoe manufacturing concerns, by reason of not being able to finance their machinery account, would be forced to close up; fully 60 per cent of the shoe manufacturing concerns would be in this class. The larger concerns, having less competition and more demand, would advance prices on all kinds of footwear. There would be practically no limit in the advance of price because of their complete control of the situation."[3] A Massachusetts manufacturer has declared: "As for myself, I believe that the United Shoe Machinery Company is the only branch of the shoe industry left that protects the small manufacturer, and that the same elements that are trying to dissolve this company are the

[1] Letter of Wolfe Bros. Shoe Co., Columbus, Ohio, *Boston News Bureau*, November 18, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30; to the same effect see also the letter of Estabrook-Anderson Shoe Co., Nashua, N.H., *Boston News Bureau*, December 6, 1911; letter of Emerson Shoe Co., Rockland, Mass., *Boston News Bureau*, November 16, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30.

[2] Letter of Trevett & Berry, Lynn, Mass., *Boston News Bureau*, November 18, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30.

[3] Letter of Callahan & Meyers, Allentown, Pa., *Boston News Bureau*, November 14, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30.

ones that have caused the change in terms of leather, which is in the favor of the large manufacturer, and if they could have succeeded in getting *their* royalties *lower* than the small manufacturer this never would have been put before the federal government. My belief is that the same elements are trying their best to get the shoe business as near a trust as possible, and if they should succeed in disintegrating the company the small manufacturers have lost their best friend in the shoe business, and if we do not have the small manufacturers where will we get the large manufacturers later?"[1] These views, apparently, have been shared by many other shoe manufacturers.[2]

Whether the company's "tied" leases exceed its patent rights, whether the company has violated the Sherman anti-trust act, and how shoe manufacturers can continue to obtain efficient and satisfactory shoe production service if the company should be disintegrated; or whether full judicial examination of the company's affairs will eventually confirm the impression which the United States Supreme Court derived from the indictment in the criminal proceeding, that "on the face of it, the combination was simply an effort after greater efficiency,"[3] are a few of the questions which are raised in these legal proceedings. Pending all this litigation, the

[1] Letter of Luke W. Reynolds, Brockton, Mass., *Boston News Bureau*, November 13, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30.

[2] See Senate Interstate Commerce Committee Hearings, January 13, 15, 16, 1912, Part XXI, pp. 1857–59; *Congressional Record*, May 12, 1911, p. 1166; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 4–12, 35–42, 64, 104, 121, 122; to the same effect see also letter of Lounsbury & Soule Co., Stamford, Conn., *Boston News Bureau*, November 21, 1911; letter of Hodsdon Manufacturing Co., Portland, Me., *ibid.*, December 1, 1911; letter of Dixon-Bartlett Co., Baltimore, Md., *ibid.*, November 17, 1911; letter of Brennan Tannery and Shoe Manufacturing Co., Upland, Cal., *ibid.*, December 2, 1911; letter of Charles D. Griffith Co., Denver, Colo., *ibid.*, November 13, 1911; letter of Blum Shoe Manufacturing Co., Dansville, N.Y., *ibid.*, November 20, 1911; letter of J. F. Cloutman & Co., Farmington, N.H., *ibid.*, November 20, 1911; letter of Heywood Boot and Shoe Co., Worcester, Mass., *ibid.*, November 24, 1911; House Judiciary Committee Hearings, February 20, 21, 22, and March 1, 1912, pp. 21–30.

[3] *United States* v. *Winslow*, 227 U.S. 202, 217.

discussion of these questions nust necessarily be deferred. Enough has been said, however, to show that the determination of these questions will be a matter of the highest significance in the economics of industrial organization.[1]

RICHARD ROE

[1] The opportunity afforded by the United Shoe Machinery Company to small, new, and struggling manufacturing concerns, the growth and prosperity of the shoe manufacturing industry since the organization of the company, the widespread satisfaction with the company's methods expressed by shoe manufacturers in the Boston News Bureau's canvass above mentioned, and the bearing upon this situation of the proceedings now pending against the company are discussed in "The Conservation of Business Opportunity," a paper read by Gilbert H. Montague before the Western Economic Society at Chicago, March 2, 1912, published in the *Journal of Political Economy*, XX, 6 (June, 1912), pp. 613, 621–26.